IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TWENTY EIGHTH DAY OF OCTOBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE BILAL NAZKI

and
THE HON'BLE MR JUSTICE S.ANANDA REDDY

WRIT PETITION NO : 33742 of 1997

Between:

Ch.Jayashanker Rao, S/o Subba Rao,

Aged 32 years, R/o. Hyderabad. **..... PETITIONER**

AND

1. The Joint Transport Commissioner & Secretary,

Regional Transport Authority, Hyderabad.
2. The Asst.Secretary, (Licensing Officer),

Regional Transport Authority,

Hyderabad (West Zone). **.....RESPONDENTS**

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ, order or direction more particularly one in the nature of a writ of certiorari calling for the records in R,No.7656/D2/HC/97, dt.1-9-1997 from the file of the first respondent confirming the orders of the second respondent in R.No.499/A3/HW/97, dt.27-5-1997, demanding Rs.29,160/- towards tax for Quarter Ending 30-6-97 in addition to penalty of Rs.43,750/- in respect of the petitioner's vehicle bearing No.AP 10T 6666 and quash the same as illegal, arbitrary and contrary to law.

Counsel for the Petitioner: MR.B.SIVA RAMA KRISHNAIAH

Counsel for the Respondents: GP FOR TRANSPORT

The Court made the following:

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ORDER: (PER BN, J)

Heard learned Counsel for the parties. The petitioner is aggrieved of an order passed by the Joint Transport Commissioner in R.No.7656/D2/HC/97, dated 1-9-1997. The facts are not at dispute between the parties.

The petitioner is owner of a vehicle, which has an All India Tourist Permit. He had paid tax up to 31-3-1997, and had informed the authorities on 27-2-1997 that the vehicle would not be used from 28-2-1997, as the vehicle needed some repairs. The stoppage of the vehicle was verified by the second respondent on 8-3-1997 and he found that the vehicle had been stopped at the residence of the petitioner. On 9-3-1997, petitioner moved an application before the concerned authority seeking permission to shift the vehicle from his residence to a garage and permission was given on 12-3-1997 for shifting the vehicle. But surprisingly, this vehicle was found by the vigilance authorities at Vijayawada during the intervening night of 24/25th of April, 1997, and a check report was prepared. On 5-5-1997, petitioner informed second respondent that the vehicle was ready to be used and therefore, the tax for the months of May and June be accepted, but the same was not accepted by the second respondent. Then petitioner filed writ petition No.10352 of 1997. On 8-5-1997, this Court ordered that the tax be allowed to be deposited, pending enquiry. Ultimately, the tax was accepted for the months of April, May and June, within the grace period, which was extended by the Government.

The contention of the petitioner is that since he had paid the tax for the months of April, May and June, and there was a report by the Motor Vehicle Inspector also that in the month of March, the vehicle had been stopped and it was found only in April, 1997 being used at Vijayawada for which period the tax had been paid by the petitioner within the stipulated time, therefore, there was no question of imposing any penalty on the petitioner.

The learned Counsel for the respondents has not been able to show us any provision in the A.P. Motor Vehicles Taxation Act, 1963 or rules made there under or even in Motor Vehicles Act, which could entitle the respondents to impose penalty for the violation, which was committed by the petitioner. The violation being that after informing the respondents that the vehicle would not be used, and after getting a stoppage certificate, vehicle was used. We agree that even after stoppage certificate was issued, the vehicle was being used which should not be permitted. But at the same time, penalties cannot be imposed without having specific power to impose penalties. In these circumstances, we have no other alternative but to set aside the orders impugned to the extent of penalty. Therefore, the impugned orders are set aside to the extent of penalty alone. If any amount has been paid on account of penalty, the petitioner is entitled to seek its refund, in accordance with law.

Writ petition is accordingly disposed of. No costs.

(BILAL NAZKI, J)

28th October, 2004

(S.ANANDA REDDY, J)

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Copy to:

1. The Joint Transport Commissioner & Secretary,

Regional Transport Authority, Hyderabad.
2. The Asst.Secretary, (Licensing Officer),

Regional Transport Authority, Hyderabad (West Zone).

3. Two CCs to the G.P. for Transport,

High Court Buildings, High Court of A.P.,

Hyderabad. (O.U.T.)

4. Two CD copies.